*THE HON'BLE SRI JUSTICE P.S. NARAYANA

+W.P.No.24370 OF 2006

% 29-11-2006

Smt. Afzal Bhee .. Petitioner

And

$ The Municipal Commissioner,
Suryapet Municipality,
Suryapet, Nalgonda District and 3 others

...Respondents

<GIST:

>HEAD NOTE:

! Counsel for petitioner : Sri T.P.Acharya

^ Standing Counsel for respondent No.1 : Sri Polisetti Radhakrishna

Counsel for respondents 2 to 4 : Sri P.S.P. Suresh Kumar

?CASES REFERRED :

THE HON'BLE SRI JUSTICE P.S.NARAYANA

WRIT PETITION NO.24370 OF 2006

Date: 29-11-2006

Between:
Smt. Afzal Bhee, w/o late Md.Moulana Saheb,
Muslim, aged 50 years, Occ: house wife,
R/o H.No.2-1-170/2/3, Amarawadi Nagar,
Suryapet village & Mandal,
Nalgonda District.

… Petitioner.

And

1. The Municipal Commissioner,
   Suryapet Municipality, Suryapet,
   Nalgonda District and 3 others.

… Respondents.

* * *

ORDER:

This Court ordered notice before admission on 22.11.2006. Sri Polisetti Radhakrishna, learned standing counsel had taken notice on behalf of R-1. Learned counsel for the petitioner was permitted to take out urgent notice to R-2, R-3 and R-4. It is stated that R-2, R-3 and R-4 had been served. It is also stated by Sri P.S.P. Suresh Kumar, representing K.Venkata Reddy, learned counsel that Sri K.Venkata Reddy had entered appearance on behalf of respondents 2, 3 and 4.

2. Sri T.P.Acharya, learned counsel representing the petitioner had taken this Court through the contents of the affidavit filed in support of the writ petition and would submit that in the event of mutation

proceedings being left untouched, there is every possibility of clearance for construction permission to respondents 2, 3 and 4 to further proceed with the construction and inasmuch as the petitioner being the absolute owner of the property in question, she will be put to serious loss.

3. On the contrary Sri Polisetti Radhakrishna, learned counsel representing the first respondent would submit that as far as mutation proceedings are concerned under Rule 7 of the Alteration of Ownership of Property in Assessment Books Rules, 1966, as against the order made by the commissioner, an appeal shall lie to the council. The counsel also would submit that inasmuch as it is stated that such orders were not served on the petitioner and she came to know about the same by virtue of a caveat lodged, even now the petitioner may be permitted to present appropriate appeals to the council concerned.

4. Sri P.S.P. Suresh Kumar, representing Sri K.Venkata Reddy, learned counsel for R-2 to R-4 would however submit that virtually there is a dispute relating to title and in fact the writ petitioner along with her sons and daughters already filed a suit O.S.140 of 2006 against the respondents 2 to 4 claiming relief of perpetual injunction and in view of the same either the petitioner can be permitted to pursue the said suit further or liberty can be given to the petitioner to agitate her rights by instituting yet another suit for declaration of title and for other appropriate reliefs. The learned counsel would submit at any rate a party who was unsuccessful in getting an interim order in a suit cannot be permitted to maintain writ petition of this nature wherein indirectly the petitioner is praying for the said reliefs.

5. Heard the counsel.

6. The writ petition is filed for a writ of Mandamus or any other appropriate writ, order or direction, declaring the impugned mutation proceedings bearing No.A1/2414/2006, dated 24.4.2006, issued by the first respondent in favour of respondents 2 to 4, as arbitrary, illegal and contrary to rules and consequently direct the respondent No.1 not to grant any construction permission to respondents 2 to 4 for raising any construction in any part of the house No.2-1-170/2/3 situated at Amarawadi Veedi, Suryapet, Nalgonda District and pass such other suitable orders.

7. It is stated that the husband of the petitioner Mohd. Moulana Saheb, had purchased land to an extent of Ac.0-04½ guntas equivalent to 546 square yards in survey No.773, situated in Suryapet town and municipality, Nalgonda District, under a registered sale deed dated 23.11.1987, thus the said property is the self acquired property of her husband. After the purchase, her late husband had applied for municipal sanction for construction of house and the first respondent had granted permission vide proceedings No.D/25/91-92, dated 07.5.1991, for construction of house and compound wall. It is also stated that the husband of the petitioner had constructed four rooms as per the sanctioned plan, but he could not constructed compound wall around the area due to paucity of funds. While so, her husband died on 06.4.1996 leaving behind her and two sons and daughters and they being legal heirs, the property had devolved on them. It is also stated that the petitioner and her sons are living in the said house and the open area is also being used and her daughters are married and they are living with their husbands at their houses at present. But till their marriage, they were living in the same house along with them. Thus, they have been in possession and enjoyment of the said property and

in all records, including municipal records also, her husband's name had been shown. While so, respondents 2 to 4, who are the brothers of her late husband, had developed an evil eye on the property and caught hold of some local politicians and employees of first respondent and in collusion with them they had managed the first respondent and got mutation proceedings bearing No.A1/2414/2006, dated 24.4.2006, in favour of the respondents 2 to 4 bifurcating the house numbers as 2-1-170/2/3/A to C, though there are no structures other than their four rooms. The same had been issued with a *mala fide* intention to grab the open land under the guise of these mutation proceedings. It is also stated that though the proceedings are dated 24.4.2006, the alleged representations are of 19.11.2005 by respondents 3 and 4 and the representation by respondent No.2 is dated 19.11.2006 and this makes very clear that the respondents have managed and issued those proceedings by fabricating the records. Moreover, the copies were issued only on 14.11.2006 as they were not known to the petitioner or her children till they had received the caveat petition No.41 of 2006 filed by the respondents 2 to 4 against the petitioner in the Court of the Junior Civil Judge, Suryapet. It is also stated that for the first time the petitioner came to know about the alleged mutation only through the caveat petition. Several factual details also had been narrated. The petitioner also states that she had given a police report on 29.10.2006 which was registered as crime No.330 of 2006 under Sections 448, 324 and 506 IPC and the same is pending investigation. It is also stated that the petitioner along with her sons and daughters filed O.S.No.140 of 2006 against the respondents 2 to 4 for perpetual injunction and also filed an application praying for relief of temporary injunction. In view of the caveat, which had been lodged, time had been granted for filing counter. It is also stated that in pursuance of the mutation aforesaid, respondents 2 to 4 are trying to

obtain municipal permission for construction of houses and in spite of objections raised by the petitioner, the respondents 2 to 4 are able to manage to get the permission and are making an attempt to further proceed with the construction.

8. Rule 3 of the Alteration of Ownership of Property in Assessment Books Rules, 1966 (for short 'the Rules'), deals with transfers by voluntary action of owner. It is no doubt true that Rule 7 of the Rules specifies that an appeal shall lie to the council against the order of the commissioner making or refusing to make alterations in the entries in the assessment books. The limitation for filing such an appeal also had been specified under Rule 7 of the Rules referred to supra. These Rules were made in exercise of the powers conferred by Sub-section (1) of Section 326 of the Andhra Pradesh Municipalities Act, 1965 in G.O.Ms.No.1059, Municipal Administration, 15th December 1996, as amended by G.O.Ms.No.517, dated 04.10.1974.

9. As can be seen from the impugned orders, the petitioner who is claiming that her husband was the original owner of the property was not put on notice. Equally, none of the legal heirs representing branch of late Mohd. Moulana Saheb had been put on notice. The brothers of the said Mohd. Moulana Saheb, respondents 2, 3 and 4, appear to be making an attempt to get these mutations effected. However, it is stated that respondents 2, 3 and 4 by virtue of gift are claiming the same.

10. This Court is not inclined to express any further opinion relating to the rival contentions of the contesting parties. In the light of the facts and circumstances, especially in view of the fact that already a suit had been filed claiming the relief of perpetual injunction, and taking into consideration the fact that neither the petitioner nor other legal heirs of

Mohd. Moulana Saheb had been put on notice before effecting the mutation proceedings, the impugned mutation proceedings are hereby set aside and the matter is remitted to the first respondent to put all the parties on notice, hear the objections which may be raised by all the parties said to be interested in the property in question and make appropriate orders in relation thereto at an early date. It is needless to say that inasmuch as the parties pleaded some urgency, the first respondent to look into the same and pass appropriate orders within a period of four weeks from the date of receipt of a copy of this order.

11. Accordingly, the writ petition is allowed to the extent indicated above. No order as to costs.

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P.S.NARAYANA, J.

Date: November 29, 2006.

L.R. copy to be marked.

Note:
Issue CC by tomorrow.

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